

COMMISSIONERS APPROVAL

CHILCOTT *Y*

LUND *Bel*

THOMPSON *AT*

TAYLOR (Clerk & Recorder)

Date.....March 21, 2006

Members Present..... Commissioner Greg Chilcott,  
Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Sally Fortino and Glenda Wiles

Present: Bryce Christiaens, Weed Department

The Board of County Commissioners met with Weed Coordinator Bryce Christiaens for a weed update.

In other business, the Board of County Commissioners met to review a request for a variance for Daly Estates. Present at this meeting was Planner Ben Howell and the consultant Terry Nelson of Applebury Survey.

Ben presented the Request for Commission Action as follows:



REQUEST FOR COMMISSION

ACTION

OG-06-03-336

Site Visit: March 16, 2006 @ 3:30 p.m.  
Meeting: March 21, 2006 @ 9:00 a.m.  
Request: To approve the Variance Request for the Daly Estates Major  
Subdivision.

## I. ACTION REQUESTED

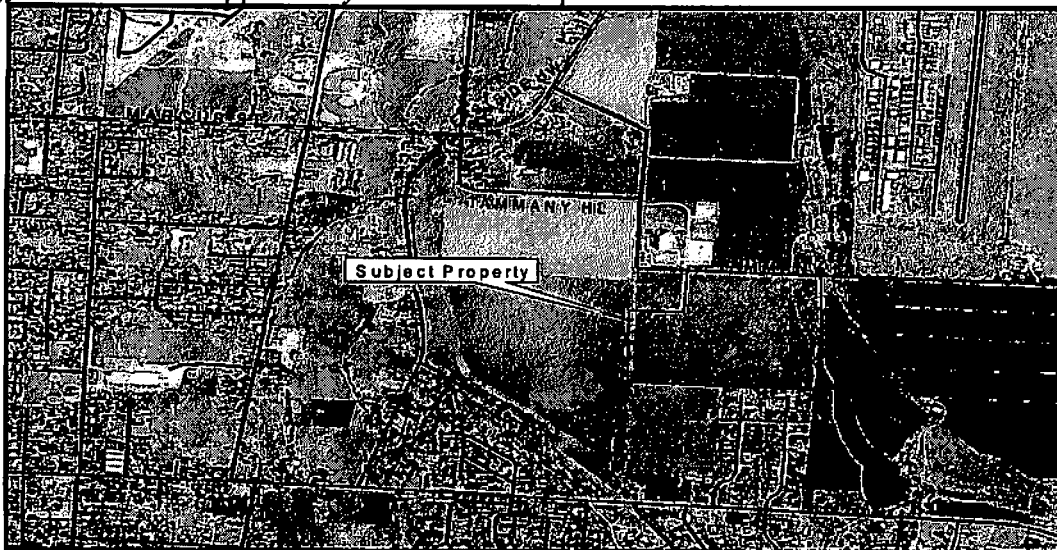
This is a request from MOL, PPL, represented by Terry Nelson of Applebury Survey, to approve the **Variance Request for the Daly Estates Major Subdivision**.

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## II. BACKGROUND

The Daly Estates subdivision (Map 1) was approved as a two-phase subdivision on April 15, 2004. The deadline for the first phase to be filed is April 15, 2006, and the second phase must be filed by April 15, 2008. The developer is asking for a one-year extension to the filing deadline of the first phase, so that they may install a community water system permitted by the Department of Environmental Quality. The developer is not asking for an extension for the second phase. The Ravalli County Subdivision Regulations do not allow extensions for filing plats for phased subdivisions, so the developers have to ask for a variance to receive the extension.

*Staff recommended approval of the variance request.*



**Map 1: Location Map**

(Source Data: Ravalli County Planning Department)

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## III. PLANNING BOARD RECOMMENDATION

The Ravalli County Planning Board conducted a public hearing on February 15, 2006. They took the following action:

The Board chose not to review the variance criteria beyond their discussion and the analysis in the staff report. The Board made a motion to **approve** the

variance request, based on the findings of fact and conclusions of law in the staff report. The Board voted 8-0 to approve this motion.

*Comments from the meeting are contained in the record.*

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#### IV. PLANNING BOARD'S AND STAFF'S RECOMMENDED MOTIONS

1. That the variance request from Section 3-2-21(a)(4) of the Ravalli County Subdivision Regulations, to allow an extension of one year for the preliminary plat approval for the first phase, be *approved*, based on the findings of fact and conclusions of law in the staff report.

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**REMAINING ISSUES:** None.

**FISCAL IMPACT:** No extraordinary fiscal impacts noted.

**ATTACHMENTS:** Variance Application package  
Staff Report with attachments  
Planning Board meeting minutes for the February 15, 2006 public hearing

**STAFF:** Benjamin H. Howell

**DATE:** March 10, 2006

Public comment was called for. None was received.

The meeting was opened for Board deliberation.

Commissioner Thompson said part of the turmoil is a result of a situation or misunderstanding within the city. Commissioner Thompson made a motion to approve the variance request allowing an extension of one year, according to staff recommendation. Commissioner Lund seconded the motion, and all voted 'aye'.

The Board met to review the draft of the Ravalli County Interim Zoning Regulations and Resolution for the square footage of retail stores. Present at this meeting was County Attorney George Corn; Deputy County Attorney and Civil Counsel to the Commissioners, James McCubbin; Interim Planning Director Karen Hughes and Planner Ben Howell. Numerous citizens were present for this meeting.

Karen gave a quick overview of what she has worked on since the last Commissioners' meeting. Her charge was to review design standards between 25,000-60,000 square feet, regulations, and resolution. The regulations include items such as a Board of Adjustments, variances, definitions, and development standards, to name a few that are addressed in the regulations. These drafts were crafted by Planning and the County Attorney's Office, as requested by the Commissioners.

She stated they have received comments from the former Planning Director and Professor Horwich, which the Commissioners might want to consider. Commissioner Chilcott thanked the Planning Staff and the County Attorney for moving us along in an expeditious fashion.

James stated they have a couple of recommendations to amend the presented draft. James stated the Commissioners should only adopt this after a legally noticed public hearing. Today's meeting should be to address the draft and make any changes necessary. George stated the resolution seemed fairly simple at the outset, but as they begin to put them into practice, they become very complicated. The resolution is the authorizing document to the regulations. Professor Horwich has reviewed this more than once. He feels confident the resolution and regulations are sound and firmly grounded in Montana Law. A copy of the draft will be available to the public prior to the public hearing. Public notice and public participation is a key part to any move forward, in order to adopt. Prior to this point there have been several meetings that have been open to the public.

Commissioner Chilcott called for public comment. None came forward at this time, as they were still reviewing the draft.

Commissioner Thompson addressed the Resolution: noting 2<sup>nd</sup> paragraph requires a grammatical change. Page 2, last paragraph, he asked for clarification on the meaning. Commissioner Thompson stated the Commissioners have also received letters to oppose this resolution, stating if the larger retail stores were allowed business would increase in the valley, because people would not have to travel to Missoula. George stated there were two issues regarding the 60,000square-foot cap. In reviewing the design standard for the regulations, there is a justification for the cap. This addresses traffic flow, roads and sewage. Without that paragraph in the resolution, they would not be able to address the design standards in the regulations. That second paragraph in the resolution gives you the justification for the regulations. Karen stated the regulations incorporate the public health and safety and the character of the valley the Commissioners want to address.

Commissioner Chilcott addressed the space and bulk requirements and the required yard setback. Clarification was given by the definitions in the regulations.

Commissioner Thompson stated the Commissioners had a poorly attended meeting last week in regard to the Highway corridor. The issue was the buildings along the corridor that have nice landscaping versus the ones that are junky. He asked if these address the old businesses, or just the new ones. Karen stated this also addresses non-conforming uses for those existing businesses that might be required to meet certain conditions, such as buildings vacant for over a year, or a fire occurs and a new building must be built; these would trigger the compliance of these regulations. Commissioner Thompson stated at the meeting they talked about setbacks and asked if it would be appropriate to discuss the setbacks of any businesses that are established within the corridors (not just 25,000-60,000 sq. ft). George stated that is a policy question and up to the Commissioners'

discretion. It would certainly broaden the scope of the regulations. James stated it would require more time in the draft document. George stated they could simply address the square footage. Karen stated the design standards are formulated for the larger businesses.

Commissioner Thompson asked if there are any regulations that address a business that is not along the corridor, but along the scenic routes, such as Meridian Road. He asked if these regulations are in effect. Commissioner Chilcott agreed there is no definition of scenic routes. James indicated they might want to amend the 'purpose section' in the regulations. George agreed they might want to address the two major roads going north and south, which is part of the justification for the corridor definition. James stated they should make some modifications to the regulations.

Commissioner Thompson addressed the resolution page 4, typographical error.

Commissioner Lund noted page 2, in regard to removing the reference to the Town of Darby. George stated one of the justifications is that a large retail facility will affect sewage and ground water, and we have limited services. It is not a slur against the Town of Darby, just to note the justification. Commissioner Chilcott said it is a matter of public record, so it could be removed.

Commissioner Lund referred to page 4 of the regulations, 5(a): the list is outdated, so utilize Clerk and Recorder records in order to obtain more accurate information. Karen stated they could also utilize the GIS database. They will utilize language for the most current data and County records.

Commissioner Lund referred to Page 5: (a), the granting will not be contrary to the public interest. She asked who makes those findings, and was told the Board of Adjustments does. George stated there are appeals that mirror State law.

Commissioner Lund referred to Page 6 "gross floor area". James stated this addresses retail sales, not for sales of items produced and manufactured on site. Commissioner Lund stated the logs are not manufactured on site. James stated if they bring in lumber for sale it is retail stores. James stated log homes would be clearly manufactured. Karen stated the lumber yards are not covered so they might want to change that. James said if they are selling what they buy, they are retail sales. Commissioner Chilcott asked if it was only under a roof. George stated the simple way would be to put them into the exemptions. James stated they should be careful, because 'Lowe's' and 'Home Depot' would fall under the exemption. James stated the retail sales that are already there are not included in this, only if they expand or rebuild.

Commissioner Chilcott addressed the gross floor area on page 6; some retail stores sell in their parking lot. He asked if someone would be enforcing this if they added to their yard. He also asked if they would zone horse arenas out because they sell a service. George stated they never considered a horse arena. James agreed that would be a recreational facility, as would health clubs.

Lee Kierreg stated the structure of the language is to limit the size of the building, and design standards should be applied to all commercial buildings, regardless of size. A 5,000 square-foot building could modulate and create the diversity along with landscaping, etc. Height allowance needs to be addressed for architectural purposes, such as roof pitch.

James stated health clubs and stables would be covered under retail services. Potential large buildings that would not be covered would be agricultural facilities, warehouses and manufacturing buildings. You could potentially have a distribution facility with a smaller retail store next to it.

Karen agreed they might want to address the design criteria that Lee has addressed or it could be addressed through a variance. Karen also indicated the issues that Lee has addressed should be included in the regulations. These are simply interim zoning that last one year (which can be extended). George stated they must continue on the planning and show good faith in regard to the planning regulations after this is adopted.

Commissioner Lund stated she did not like the 50% replacement cost at the time of destruction. She stated there is a potential to put someone out of business.

Commissioner Chilcott stated on the resolution he struggled with #3 under page 3. He suggested they should say the roads are in close proximity to the river, not border it.

Commissioner Lund asked about page 2 of regulations to show the designation of permit officer. Karen stated the second sentence could be removed. Commissioner Lund asked, under page 3 of B-3, why is the application being sent to the applicant? Karen stated they could remove the one sentence. Under # 5, does it allow a one-year extension to the permit officer? Karen stated that was correct.

Proponents: Rick O'Brien asked what the typical square footage of a Wal-Mart or Home Depot stores were. Karen stated the Super Wal-Mart in Missoula is 250,000 square feet. Lowe's is 150,000. The local K-Mart is around 60,000. The local IGA is 18,000. Most grocery stores are 60,000 sq foot.

Russ Lawrence, owner of Chapter One Bookstore stated this regulation and resolution puts the County in the lead and is a legacy to protect the valley. It also protects businesses, like the oath of doctors 'to do no harm'. This interim resolution is a document that can be worked on. There is a sense of urgency to this and if it takes a year to polish it, that is good, as no harm will be permitted to occur.

Lee Kierreg encouraged the Commissioners to be proactive for our future.

Rick Fuhrman supports the adoption of this. He thinks it is a proactive and positive step.

Jill (last name unknown) asked how the regulations are defined along with the resolution. Karen stated they would make the regulations specific to the resolution.

Archie Thomas stated a public discussion on the retail development standards. Members of the public can look at the Internet, at [www.newrules.org](http://www.newrules.org) that has studies in this regard. This is not a new concept and is being dealt with worldwide.

Michael Howell commended the Commissioners on being proactive to protect the businesses in the valley. They got right on it, and the rest of the residents are making the same plea about the development in their areas, so move forward with that, also.

Jill asked about the variance request procedure. James stated they could include the roof slope for height, parking, etc. Karen said ideally variances should be rare.

Joel (last name unknown) said he appreciated the Commissioners' action to keep the Bitterroot unique.

No opponents.

Commissioner Chilcott thanked the staff for their assistance.

James stated no changes brought forth this date are substantive in nature, therefore he recommended they move forward with the public hearing.

The public hearing is scheduled for April 12<sup>th</sup>, 2006 at 1900 hours.

The Board met with Ken Senn in regard to the Grants Meadows Subdivision Final Plat Issues. Present at this meeting was Karen Hughes and Engineer Jason Rice. Ken agreed to obtain a new letter of credit as per the concerns of James on the expiration date of at least one year following the last completion date of the required infrastructure improvements.

Commissioner Thompson stated this determination seems right; the final plat for this subdivision may be approved without the applicant having to make any improvements on Golf Course Road. James said the estoppels trump the subdivision regulations. The applicant attempted to confirm the issue of the road. He stated he shared this with George Corn and George agreed. Commissioner Lund stated the consultant has provided the letters and she agrees with Commissioner Thompson.

David stated he just received the memo on this request. He stated the memo contains factual and conceptual errors. He questioned that the applicant (Ken Senn) had no ideas the road did not meet County standards, but then the applicant agreed last week it was abundantly clear. David stated he has no explanation for not responding to the applicant or the engineer for a year and a half. David further stated other consultants clarify the ambiguity, but this one did not. He stated legally that might not be here or there, but the applicant had responsibility to determine the needs of the road himself. It is unfortunate,

but it does not relieve the claimant from making upgrades to the road, even though he did not respond.

James said the facts are presented from correspondences, and the minutes of last weeks meeting. And basically if they could prove the applicant had been told that Grantsdale is not a County-standard road the facts would be different. But the county has the opinion of the former Road Supervisor, who said it meets County standards; and they have the letters of request to the Road Department, and no response from David. Therefore the county is stuck not being able to make the improvements, and this is unique to this subdivision and applicant.

Commissioner Chilcott said he missed the last meeting, but stated the Commissioners are trying to protect the public, and therefore asked why the county was not receiving something? Ken stated from his perspective he wants to do what is fair and reasonable. He based his business decisions on information that was given to him by the county, and had he known of the requirements he would have addressed the requirements. Ken stated he looked at the cost of doing business, but did not have any opportunity to address this last request until the very end of the project.

Karen stated the preliminary plat approval states if the road is substandard the applicant must bring it up to County standards. This was the end of August. The staff report was in error and the consultant caught her error for the pro rata; it was improvements to the road. But we did not know what improvements would be required. We have not had 21+ lots, so we missed the mark there. James stated this is 21 or more lots and is triggered at the time of application, not at final plat. Karen said they should have had the notice of the substandard road or request for variance before the time of final plat.

Ken asked how he could give cash to the County. James said that would be outside the subdivision process, and would be a donation to the County. Ken stated he would not want the money to look like he was buying the county off. He did not want to approach this issue with a threat of litigation, and realizes this is complicated and difficult. But he will sit down and see what he can do; the cash might be a token, but he will see what he can do.

In other business the Board of County Commissioners met with GIS for an update.

Commissioner Lund attended a meeting of JSEC.

Commissioner Chilcott attended a Highway 93 Corridor meeting at Florence High School.



Coordinator's Report to Commissioners  
March 21, 2006

- 1) I met with Steve Whitson and Deb Goslin at Lee Metcalf to discuss the position funded through our office for an herbicide applicator on the refuge. Everything is in place for Clay Samples to be hired most likely on the 1<sup>st</sup> of April. A little under \$15,000 has been allocated through the USFWS for this position for the year.
- 2) On the 15<sup>th</sup> a meeting was held for the Voluntary Agreement holders to get their evaluation of the program and also to discuss the possibility of an adopt-a-roadside program.
- 3) On the 17<sup>th</sup> I was in Helena for a MWCA Education Committee meeting to review the NWTF grants focusing on education for 2006. Thirteen grants were discussed, all of which were worthy of being funded.
- 4) On the 22<sup>nd</sup> I met with Deanne Harbaugh, city councilwoman for Hamilton for a tour of Riverside Park and to discuss the need for a city weed management plan for Hamilton.
- 5) On the 23<sup>rd</sup> we held our Grantsdale Weed Education Meeting addressing the common bugloss in that area. April 29<sup>th</sup> will be our Community Work Day.
- 6) On the 28<sup>th</sup> I met with Gil Gale to work on the details of the Cooperative Agreement as it is close to being completed. Lines for the Tom Henderson work will be continued, for GIS mapping will be enhanced and lines for education, awareness and the school bio-control programs will be added.
- 7) Sharon Browder from Stonehouse Landscape Design has begun volunteering her time talking to landowners about saltcedar and advertising our Saltcedar Replacement Program.
- 8) March 9<sup>th</sup> I met with Tom Henderson to talk about the spurge work on Forest Service and private land.
- 9) March 14<sup>th</sup> and 15<sup>th</sup> we attended the NWTF hearings in Lewistown.
- 10) Over the past month I've given presentations at the Agronomy Grower Meeting for Mountain West Co-op, Right to Farm and Ranch Board, Hamilton City Parks Board, to Ravalli County Road Department Crew and Bitterroot RC & D to talk about the weed district goals, services we provide and to give new invader update.

Bryce Christiaens  
Noxious Weed Coordinator

